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SEP 21 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1463

WILLIAM J. MILLIKEN, *et al.*,

Petitioners,

vs.

RONALD BRADLEY, *et al.*

SUPPLEMENTAL BRIEF FOR RESPONDENTS BRADLEY, ET AL.

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Plaintiffs Below

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Pursuant to Rule 24(5) of the Rules of the Supreme Court, respondents Bradley, et al. respectfully file this Supplemental Brief to advise the Court of proceedings in this cause before the district court and the United States Court of Appeals for the Sixth Circuit which have taken place since the filing, by respondents school districts on or about June 21, 1972, of a Supplemental Brief and Supplemental Joint Appendix in support of the Petition. In light of these proceedings the question properly presented by the Petition is now moot.

In our Brief in Opposition to Certiorari, pages 6-7, we noted that the question of appealability of the district court's September 27, 1971 opinion and order was likely to become moot prior to a decision on the merits by this Court even if certiorari were granted. We now can advise the Court that such issue is indeed moot at the present time, and there is no reason to grant the writ of certiorari in this case.

After entry of the district court's June 14, 1972 ruling and order, which is the subject of the Supplemental Brief and Joint Appendix filed last spring by other respondents, appeals were noted and various interlocutory proceedings transpired before the Sixth Circuit on matters of stays, mandamus and prohibition sought by various parties. On July 20, 1972, the district court entered an order pursuant to F.R.C.P. 54(b), directing entry of judgment as to certain claims, and pursuant to 28 U.S.C. § 1292(b), certifying the existence of controlling questions of law as to which substantial ground for difference of opinion existed, authorizing appeal of all its previous rulings (dated September 27, 1971, March 24, 1972, March 28, 1972, June 14, 1972 and July 11, 1972).[1] On the same day the Court of Appeals granted leave to appeal and stayed the July 11, 1972 district court order "and all orders of the district court concerned with pupil and faculty reassignment within the metropolitan area beyond the geographic jurisdiction of the Detroit Board of Education, and all other proceedings in the district court other than planning proceedings" pending appeal. (See Appendix A hereto).

The appeal was also expedited and scheduled for hearing on August 24, 1972; the parties submitted lengthy and thorough briefs on all issues, including those concerning the correctness of the September 27, 1971 district court order and opinion finding unlawful segregation of the Detroit public schools, as well as the subsequent orders of the district court concerned with devising a remedy for that constitutional violation. At the close of the argument on August 24, 1972, the Court of Appeals denied an oral motion to vacate its stay.

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[1] On July 11, 1972, the district court entered an order directing the purchase of transportation equipment in order that capability to implement the Court's June 14 order might be available during the 1972-73 school year.

Thus the issue presented by the Petition for Writ of Certiorari is moot; petitioners have obtained their hearing before the Court of Appeals and all district court decrees which might affect the operation of the Detroit area public schools have been stayed pending the outcome of the appeals now under submission in the Sixth Circuit. Whatever reason might once have existed for reviewing the dismissal of the prior appeal by the Sixth Circuit, or the orders of the district court, the proper course at this time is to deny the Petition and permit the Court of Appeals to complete its consideration of the matter, which may render unnecessary any further proceedings before this Court on behalf of petitioners.

CONCLUSION

For the foregoing reasons, respondents Bradley et al. respectfully pray that the writ be denied.

Respectfully submitted,

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APPENDIX A

#72-8002

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RONALD BRADLEY, *et al.*,

Plaintiffs-Appellants,

—v.—

WILLIAM G. MILLIKEN, *et al.*,

Defendants-Appellants,

and

DETROIT FEDERATION OF TEACHERS LOCAL 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO,

Defendant-Intervenor,

and

DENISE MAGDOWSKI, *et al.*,

Defendants-Intervenors.

Before:

PHILLIPS, *Chief Judge,* EDWARDS and PECK, *Circuit Judges.*

ORDER

The District Court has certified that certain orders entered by him in this case involve controlling questions of law, as provided by 28 U. S. C. §1292(b), and has made a determination of finality under Rule 54(b), Fed. R. Civ. P.

Appendix A

This court concludes that among the substantial questions presented there is at least one difficult issue of first impression which never has been decided by this court or the Supreme Court. In so holding we imply nothing as to our view of the merits of this appeal. We conclude that an immediate appeal may materially advance the ultimate termination of the litigation. Accordingly, it is ORDERED that the motion for leave to appeal be and hereby is granted.

It is further ORDERED that the appeal in this case be advanced on the docket of this court and scheduled for hearing Thursday, August 24, 1972, at 9. a.m. The appendix and simultaneous briefs of all parties shall be filed not later than 25 days after the entry of this order. Reply briefs shall be filed not later than August 21, 1972. Typewritten appendix and briefs may be filed in lieu of printed briefs, together with ten legible copies produced by Xerox or similar process. An appendix must be filed. The court will not entertain a motion to hear the appeal on the original record.

The motion for stay pending appeal having been considered it is further ORDERED that the Order for Acquisition of Transportation, entered by the District Court on July 11, 1972, and all orders of the District Court concerned with pupil and faculty reassignment within the Metropolitan Area beyond the geographical jurisdiction of the Detroit Board of Education, and all other proceedings in the District Court other than planning proceedings, be stayed pending the hearing of this appeal on its merits and the disposition of the appeal by this court, or until further order of this court. This stay order does not apply to the studies and planning of the panel which has been appointed by the District Court in its order of June 14, 1972, which panel was charged with the duty of preparing interim and final plans of desegregation. Said panel is authorized to proceed with

its studies and planning during the disposition of this appeal, to the end that there will be no unnecessary delay in the implementation of the ultimate steps contemplated in the orders of the District Court in event the decision of the District Court is affirmed on appeal. Pending disposition of the appeal, the defendants and the School Districts involved shall supply administrative and staff assistance to the aforesaid panel upon its request. Until further order of this court, the reasonable costs incurred by the panel shall be paid as provided by the District Court's order of June 14, 1972.

Entered by order of the Court.

/s/ JAMES A. HIGGINS
Clerk